

AMENDMENTS TO THE DRAWINGS

Applicant submits herewith replacement drawing sheets for FIGS. 9, 10, 13, 14, 16, 23, and 24. No new matter has been added by way of this amendment.

Applicant's specification refers to "connector 107" in the description of both FIG. 9 and FIG. 10. However, reference number "107" was inadvertently omitted from FIGS. 9 and 10. The attached sheets include new versions of FIGS. 9 and 10 incorporating the omitted reference number "107." In addition, Applicant's specification refers to "button moldings 100, 102" in the description of FIG. 10. However, reference numbers "100" and "102" were inadvertently omitted from FIG. 10. The new version of FIG. 10 included in the attached sheets also incorporates the omitted reference numbers "100" and "102."

Applicant's specification refers to "connector 113" in the description of both FIG. 13 and FIG. 14. However, reference number "113" was inadvertently omitted from FIGS. 13 and 14. The attached sheets include new versions of FIGS. 13 and 14 incorporating the omitted reference number "113." In addition, Applicant's specification refers to "display circuit board 104" and "antenna circuit board 106" in the description of FIG. 14. However, the display circuit board illustrated by FIG. 14 was inadvertently improperly identified with reference number "106" and the antenna circuit board illustrated by FIG. 14 was inadvertently improperly identified with reference number "104." The new version of FIG. 14 included in the attached sheets replaces the incorrect reference number "104" with the correct reference number "106" for the antenna circuit board, and replaces the incorrect reference number "106" with the correct reference number "104" for the display circuit board.

Applicant's specification refers to "antenna circuit board 106" in the description of FIG. 16. However, the antenna circuit board illustrated by FIG. 16 was inadvertently improperly identified with reference number "104." The attached sheets include a new version of FIG. 16 that replaces the incorrect reference number "104" with the correct reference number "106" for the antenna circuit board. In addition, Applicant's amended specification refers to "antenna circuit board 106" in the description of FIGS. 23 and 24. However, the antenna circuit board illustrated by FIGS. 23 and 24 was inadvertently improperly identified with reference number

“104.” The attached sheets include new versions of FIGS. 23 and 24 that replace the incorrect reference number “104” with the correct reference number “106” for the antenna circuit board.

To summarize, the attached sheets include a new version of FIG. 9 incorporating the omitted reference number “107,” a new version of FIG. 10 incorporating the omitted reference numbers “100”, “102”, and “107,” a new version of FIG. 13 incorporating the omitted reference number “113,” a new version of FIG. 14 incorporating the omitted reference number “113” and correcting the reference numbers for display circuit board “104” and antenna circuit board “106,” and new versions of FIGS. 16, 23, and 24 correcting the reference number for antenna circuit board “106.”

Attachment: Replacement Sheets (7)

REMARKS

This amendment is responsive to the Office Action dated July 5, 2006. Applicant has amended claims 6, 17, 27, and 30. In addition, the specification and FIGS. 9, 10, 13, 14, 16, 23, and 24 have been amended to correct inadvertent typographical errors. Claims 1-43 are pending.

Allowable Subject Matter

In the Office Action, the Examiner indicated that claims 38-43 are allowable in their present form and objected to claims 6, 17, 27, and 31 as depending upon a rejected base claim. The Examiner further indicated that claims 6, 17, 27, and 31 would be allowable if rewritten in independent form. In this Amendment, Applicant has amended each of claims 6, 17, 27, and 31 to include all of the subject matter recited by the respective base claim and any intervening claims. Consequently, claims 6, 17, 27, and 31 are in condition for allowance.

Claim Rejection Under 35 U.S.C. § 103(a)

In the Office Action, the Examiner rejected claims 1-5, 8, 12-16, 22-26, 28-30 and 32-37 under 35 U.S.C. § 103(a) as being unpatentable over Lebel et al. (US 2003/0065308) in view of Mann et al. (US 5,833,623). Claims 1, 2, 4, 12, 13, 15, 22-24, 28 and 32 were also rejected to under 35 U.S.C. § 103(a) as being unpatentable over Mann et al. in view of Lebel et al. In addition, claims 7, 9, 11 and 18-21 were rejected to under 35 U.S.C. § 103(a) as being unpatentable over Lebel et al. in view of Mann et al. as applied to claims 1 and 12, and further in view of Stanton et al. (US 6,249,703). Claim 10 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Lebel et al. in view of Mann et al. as applied to claim 9 above, and further in view of Stein et al. (US 2004/0230247).

Applicant respectfully traverses the rejection because the applied references fail to teach or suggest the inventions defined by Applicant's claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention.

Independent Claims 1, 12, 24, 28, and 32

With reference to independent claims 1 and 24, for example, the applied references lack any teaching or suggestion of a method including disabling a display in a programmer during

activation of telemetry circuitry or communication via telemetry circuitry to reduce electrical interference. Similarly, the applied references lack any teaching or suggestion of a programmer including control circuitry to disable a display in the programmer during telemetry to reduce electrical interference, as recited by Applicant's claims 12, 28, and 32.

The Office Action set forth a rejection of independent claims 1, 12, 24, 28, and 32 under 35 U.S.C. § 103(a) that relies on the combination of Mann et al. and Lebel et al. However, neither Lebel et al. nor Mann et al. teach or suggest disabling a display in a programmer (or control circuitry for doing the same) during activation or communication via telemetry circuitry to reduce electrical interference. Accordingly, Applicant respectfully requests that the rejection to Applicant's independent claims 1, 12, 24, 28, and 32, and all claims depending therefrom, be withdrawn.

As the Office Action recognized, Lebel et al. does not disclose disabling a display during telemetry. (Office Action at page 4, item 12). The Office Action looked to Mann et al. to cure this deficiency in Lebel et al. In particular, the Office Action cited column 17, line 48 of Mann et al. as teaching "disabling a display . . . to avoid electrical interference (between the telemetry data and display rendering data)." (Office Action at page 4, item 12). Applicant respectfully submits that the Examiner has misinterpreted the scope and content of Mann et al.

At column 17, line 48, Mann et al. appears to teach turning off a display during telemetry (specifically stating, "a follow-up protocol is started, the IEGM/ECG display is automatically turned off while the programmer retrieves the protocol items in the background,"). However, a thorough reading of Mann et al. indicates that Mann et al. is actually referring to turning off a display panel of a display, rather than disabling the entire display. Mann et al. does not teach or suggest that the entire display is turned off when the IEGM/ECG display panel is turned off because the display includes other display panels.

Mann et al. teaches a programmer in the form of a computer (Col. 7, lines 29-34), which presents a display screen 200 (FIG. 2) that includes a display panel 202, a control panel 204, and a foreground panel 206. (Col. 8, lines 59-65.) As FIG. 2 of Mann et al. illustrates, the display, control, and foreground panels constitute different portions of the common display screen 200. The real-time display panel 202 displays the ECG and ICGM display signals transmitted by ECG electrodes and an implanted medical device. (Col. 8, line 65 – col. 9, line 2.) Thus, the

“IEGM/ECG display” referred to by Mann et al. at column 17, line 48 is the display panel 202 portion of the display screen because IEGM/ECG data is only displayed in the display panel 202 portion of the display screen 200. The display panel 202 appears to be similar to a window, among several windows displayed on screen 200. For example, in addition to the display panel 202, the display screen 200 includes at least two other portions (the control panel 204 and foreground panel 206). Thus, at column 17, line 48, Mann et al. does not teach disabling a display, but rather teaches merely turning off the content of one of several portions of the display screen 200. Mann et al. does not mention or even suggest that the entire monitor presenting the display screen 200 may be disabled during telemetry. Nor does Mann et al. provide any teaching that would have suggested any reason to do so. As a result, Mann et al. does not teach or suggest each and every element of Applicant’s independent claims 1, 12, 24, 28, and 32.

Mann et al. does not provide any suggestion that disabling a display in a programmer during activation or communication of a telemetry circuitry may reduce electrical interference. Mann et al. teaches turning off an IEGM/ECG display panel for a different reason. In particular, the IEGM/ECG display panel is turned off during interrogation of an implanted medical device because a clinician cannot view information on the IEGM/ECG display panel until the “diagnostic data record (or other data item) has been retrieved (i.e., is resident within the memory of the programmer).” (Col. 5, lines 8-11.) Hence, the IEGM/ECG display panel is turned off because there is no data available for presentation. Even if Lebel et al. discloses disabling a light source associated with a display to reduce electrical interference, as the Office Action suggests, there would have been no motivation to combine such a teaching with Mann et al. to arrive at the inventions claimed in Applicant’s independent claims 1, 12, 24, 28, and 32 for at least two reasons. First, Mann et al. does not disclose disabling a display during telemetry. Second, Mann et al. does not teach or suggest disabling a display during telemetry to reduce electrical interference.

For at least these reasons, the Examiner has failed to establish a prima facie case for non-patentability of Applicant’s independent claims 1, 12, 24, 28, and 32 under 35 U.S.C. § 103(a). Withdrawal of this rejection is requested.

Dependent Claims

Claims 2-5 and 7-11 depend from claim 1, claims 13-16 and 18-23 depend from claim 12, claims 25 and 26 depend from claim 24, claims 29 and 31 depend from claim 28, and claims 33-37 depend from claim 32. As established above, independent claims 1, 12, 24, 28, and 32 are patentable over the cited references, and as a result, all claims depending therefrom are also patentable over the cited references. Applicant also traverses the rejections of claims 2-5, 7-11, 13-16, 18-23, 25, 26, 29, 31, and 33-37. The prior art of record fails to teach each and every element of claims 2-5, 7-11, 13-16, 18-23, 25, 26, 29, 31, and 33-3, and the rejection should be withdrawn. Applicant addresses some of the dependent claims below for purposes of illustration.

Claims 9 and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Lebel et al. in view of Mann et al. in further view of Stanton et al. However, the applied references do not teach or suggest a programmer including an internal antenna and telemetry circuitry mounted on a first circuit board and a display mounted on a second circuit board, as recited by claims 9 and 20. As the Office Action recognizes, Lebel et al. merely discloses that "portions of the electronics not embodied in the processor ICs may form part of one or more hybrid circuit boards." (Office Action at page 6, item 18; Lebel et al. at paragraph 191.) Nothing in Lebel et al. teaches or suggests that the "hybrid circuit boards" may include two circuit boards. Lebel et al. does not even disclose two circuit boards mounted within the programmer housing. While Lebel et al. mentions that an antenna for a telemetry system is mounted on a hybrid circuit board (paragraph 88), it does not necessarily follow that the display is mounted on a circuit board separate from the hybrid circuit board.

The fact that a certain characteristic may be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993); MPEP § 2112. The Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original); MPEP 2112. No reasonable support has been provided for the determination that an antenna and display screen in Lebel et al. are mounted on first and second circuit boards, respectively. Accordingly, claims 9 and 20 are patentable over the applied references.

Rejection for Obviousness-type Double Patenting:

The Examiner provisionally rejected claims 1-3, 8, 12-14, 22-24, 28, and 32-37 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 22 and 32 of copending Application No. 10/693,835. Claims 4, 5, 15, 16, 25, 26, 29, and 30 were also rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 22 of copending Application No. 10/693,835 in view of Lebel et al.

Applicant respectfully traverses these rejections. Applicants respectfully submit that the Examiner has not established a prima facie case of obviousness-type double patenting. To support an obviousness-type double patenting rejection, the Examiner must assess the differences between the claims in the pending application and the claims in the issued patent. In re Berg, 46 USPQ2d 1226, 1229 (Fed Cir. 1998). In particular, the Examiner should indicate why the claims in an application are obvious over the claims in the granted patent. Id.

With respect to the rejection of claims 1-3, 8, 12-14, 22-24, 28, and 32-37, the Office Action merely states that Applicant's claims are not patentably distinct from claims 22 and 32 of copending Application No. 10/693,835 "because the copending applicant's claims are more narrow and meet the limitations of the broader claims of this application." The proper analysis is not whether claims 22 and 32 of copending Application No. 10/693,835 are more narrow and meet the limitations of Applicant's claims 1-3, 8, 12-14, 22-24, 28, and 32-37, but whether Applicant's claims would have been obvious in view of the claims set forth in the copending application.

Claims 22 and 32 of copending Application No. 10/693,835 recite a programmer in which an internal antenna is mounted within a programmer housing on a first circuit board and a display is mounted within the programmer housing on a second circuit board, where major planes of the first and second circuit boards are generally parallel to one another and are disposed at a fixed separation distance relative to one another within the programmer housing. Applicants respectfully submit that the pending claims, which relate to a method or programmer including control circuitry for disabling a display during activation or communication via telemetry circuitry, would not have been obvious in view of claims 22 and 32 of copending Application

No. 10/693,835. Applicant notes that of the provisionally rejected claims, only claims 9 and 20 recite an internal antenna mounted on a first circuit board and a display mounted on a second circuit board.

With respect to the rejection of claims 4, 5, 15, 16, 25, 26, 29, and 30, the Office Action relies on the combination of claim 22 of copending Application No. 10/693,835 and Lebel et al. to find claims 4, 5, 15, 16, 25, 26, 29, and 30 unpatentable on the ground of nonstatutory obviousness-type double patenting. In particular, the Office Action asserts that Lebel et al. teaches enabling "a display after telemetry to provide diagnostic and programming information." (Office Action at page 8, item 26.) However, this assertion is inconsistent with a previous admission in the Office Action at page 4, item 12 that Lebel et al. "does not expressly disclose disabling an LCD display during telemetry." Accordingly, claim 22 of copending Application No. 10/693,835 in view of Lebel et al. does not teach or suggest the elements of Applicant's claims 4, 5, 15, 16, 25, 26, 29, and 30.

The rejection for obviousness-type double patenting should be withdrawn. If the Examiner chooses to maintain the obviousness-type double patenting rejection, however, Applicants respectfully request clarification of the grounds of rejection.

CONCLUSION

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

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